

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

DAVID BROWNLOW; JIM EHLERT;  
CHRIS CARROLL; CHET E. DAVIS;  
LAWRENCE P. DOLAN; DELTA J.  
ENTERPRISES, an Oregon  
Limited Partnership; DENNIS  
JACKSON; JEFF JOHNSON; KRIS  
JOHNSON; BRUCE PAYNE; JOE  
NELSON; SHERRY SHERMAN;  
DENISE WHEELAND; AND GERALD  
WHEELAND,

3:09-CV-1277-AC

ORDER

Plaintiff,

v.

AMERICAN BEEF PROCESSING,  
LLC; ANTHONY J. GARWOOD; JOHN  
S. EWALD; JULIE C. GARWOOD;  
RICH CASPER; JAMES PETERSON;  
AND FOLEY & LARDNER, LLP,

Defendants.

**BROWN, Judge.**

Magistrate Judge John Acosta issued Findings and Recommendation (#60) on June 21, 2011, in which he recommends this Court deny Plaintiffs' Motion (#51) for Attorneys' Fees. The matter is now before this Court pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b).

Plaintiffs filed timely Objections (#65) to the Magistrate Judge's Findings and Recommendation. When any party objects to any portion of the Magistrate Judge's Findings and Recommendation, the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1). *See also United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9<sup>th</sup> Cir. 2003)(*en banc*); *United States v. Bernhardt*, 840 F.2d 1441, 1444 (9<sup>th</sup> Cir. 1988).

The Court has completed its consideration of Plaintiffs' Objections and has reviewed *de novo* those portions of the Findings and Recommendation to which Plaintiffs object. The Court does not find any error in the Magistrate Judge's analysis and concludes Plaintiffs have not shown any basis to modify the Findings and Recommendation.

The Court, however, notes it received a letter from James E. Leuenberger, counsel for Plaintiffs, on July 22, 2011, in which Mr. Leuenberger contends he has evidence that James Dowell, counsel for Defendants, made untrue statements to this Court that

were material to the Court's consideration of Plaintiffs' Motion for Attorneys' Fees. As support for his contention, Leuenberger also submitted the Declaration of Shawna Dicintio, a former paralegal for Dowell. The Court directs the Clerk to file these documents in the record.

In his letter, Leuenberger indicates he is in the process of requesting an investigation by the Oregon State Bar. Accordingly, Leuenberger requests this Court to retain jurisdiction over this matter for the sole purpose of determining whether the Motion for Attorneys' Fees should be revisited in light of any new evidence that may come to light in this process.

In light of Leuenberger's letter and the supporting Declaration of Dicintio, the Court **grants** Plaintiffs' request to retain jurisdiction over this matter solely for the purpose of resolving any motion to reconsider the Findings and Recommendation the Court now adopts provided that Plaintiffs file any such motion within a reasonable time and pursuant to Federal Rule of Civil Procedure 60. Nonetheless and in accordance with the Court's Order (#59), this matter should be remanded to state court.

### **CONCLUSION**

The Court **ADOPTS** Magistrate Judge Acosta's Findings and Recommendation (#60). The Court **GRANTS** Plaintiffs' request to

retain jurisdiction for the sole purpose of resolving any motion to reconsider this Court's denial of Plaintiffs' Motion (#51) for Attorneys' Fees as set out in this Order.

IT IS SO ORDERED.

DATED this 27<sup>th</sup> day of July, 2011.

/s/ Anna J. Brown

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ANNA J. BROWN  
United States District Judge